

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAMELA N.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-5229-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of her application for Supplemental Security Income. Plaintiff contends the administrative law judge (“ALJ”) erred in discounting her testimony and failing to fully adopt prior credited findings in assessing her residual functional capacity (“RFC”). (Dkt. # 10 at 1.) As discussed below, the Court AFFIRMS the Commissioner’s final decision and DISMISSES the case with prejudice.

II. BACKGROUND

Plaintiff was born in 1970, has a high school diploma, and has worked as a caregiver. AR at 74-75, 273. Plaintiff was last gainfully employed in 2018. *Id.* at 75.

In July 2019, Plaintiff applied for benefits, alleging disability as of April 10, 2019. AR at 242-47. Plaintiff's application was denied initially and on reconsideration, and Plaintiff

1 requested a hearing. *Id.* at 148-56, 160-81. After the ALJ conducted a hearing in January 2021
 2 (*id.* at 66-90), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 15-27.

3 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
 4 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the
 5 Commissioner to this Court. (Dkt. # 4.)

6 III. LEGAL STANDARDS

7 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
 8 security benefits when the ALJ's findings are based on legal error or not supported by substantial
 9 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
 10 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
 11 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
 12 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
 13 alters the outcome of the case." *Id.*

14 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
 15 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
 17 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
 18 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
 19 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
 20 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
 21 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
 22 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

IV. DISCUSSION

A. The ALJ Did Not Harmfully Err in Discounting Plaintiff's Testimony

The ALJ summarized Plaintiff's allegations of disabling limitations and explained that she discounted them because: (1) Plaintiff retained the ability to clean, wash dishes, prepare simple meals, use public transportation, spend time with others, shop in stores, independently perform activities of daily living, and take care of others; (2) Plaintiff's back condition improved with conservative treatment; (3) the objective evidence failed to corroborate Plaintiff's allegation of disabling limitations related to joint problems, asthma, deep vein thrombosis, obesity, or mental impairments; and (4) the "current medical evidence" does not support Plaintiff's testimony that she needs to elevate her legs three times per day. AR at 21-23, 25. Absent evidence of malingering, an ALJ must provide clear and convincing reasons to discount a claimant's testimony, and Plaintiff raises several challenges to the ALJ's reasoning here. *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

Plaintiff first argues that the ALJ erred in failing to explain why Plaintiff's listed activities either contradict her allegations or demonstrate transferable work skills. (Dkt. # 10 at 5-6.) The Court agrees. The ALJ erred in relying on Plaintiff's activities because there is no evidence that Plaintiff performed them in a manner inconsistent with her allegations and the ALJ did not find that they establish the existence of transferable work skills. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (activities may undermine credibility where they (1) contradict the claimant's testimony or (2) "meet the threshold for transferable work skills"). The Court finds this error harmless, however, in light of the ALJ's other valid reasons to discount Plaintiff's allegations, as discussed *infra*. *See Carmickle v. Comm'r of Social Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).

1 Next, Plaintiff argues that even if her back pain was 90% resolved with medication (AR
2 at 708), some pain still remained. (Dkt. # 10 at 7.) The ALJ's decision does not suggest
3 otherwise. Instead, the ALJ found that the record "does not substantiate disabling back
4 impairments" because the record described Plaintiff's back condition as "mild," the functional
5 findings were mostly normal, and Plaintiff "reported medications controlled the back pain
6 well[.]" AR at 22 (citing *id.* at 708). The ALJ did not find that Plaintiff's pain had been entirely
7 eliminated by medication, and thus Plaintiff has not shown error in the ALJ's decision by
8 pointing to evidence indicating that some pain persisted despite medication.

9 Lastly, Plaintiff argues that because the record contains recommendations that she elevate
10 her legs, the ALJ erred in suggesting that the evidence did not fully corroborate her testimony
11 that she must elevate her legs three times per day for 20-30 minutes at a time. *See* AR at 21-22,
12 81. But Plaintiff has not pointed to any evidence, other than her own hearing testimony,
13 identifying such a limitation. *See id.* at 81. A provider's recommendation that Plaintiff should
14 elevate her legs "when resting" or at an unspecified frequency/duration (*see id.* at 406, 647, 756)
15 does not necessarily corroborate Plaintiff's allegation that she must elevate her legs three times
16 per day for 20-30 minutes at a time. Furthermore, none of the physicians that reviewed Plaintiff's
17 records opined that she must elevate her legs. *See id.* at 122-24, 137-38, 744, 746.

18 To the extent that Plaintiff also argues that the ALJ's findings regarding her back pain do
19 not address her alleged need to elevate her legs (dkt. # 12 at 3), this argument does not identify
20 an error in the ALJ's decision because the ALJ separately addressed Plaintiff's history of deep
21 vein thrombosis. *See* AR at 23. The ALJ summarized the findings related to this condition and
22 explained that Plaintiff treated her venous insufficiency with medication and compression
23 stockings. *Id.* Although, as detailed in the previous paragraph, there are a few recommendations

1 in the record that Plaintiff should elevate her legs to some degree, Plaintiff has not identified any
2 evidence in the record that directly corroborates Plaintiff's testimony that she needed to elevate
3 her legs for 20-30 minutes three times per day. Thus, Plaintiff has failed to show that the ALJ
4 erred in discounting Plaintiff's testimony on that issue.

5 Because Plaintiff has failed to identify harmful error in the ALJ's assessment of her
6 allegations, the Court declines to disturb the ALJ's findings in this regard.

7 **B. Plaintiff has Failed to Establish Harmful Error in the ALJ's Assessment of
8 her RFC**

9 In a prior administratively final decision denying benefits, the ALJ found that Plaintiff
10 had the RFC to, in relevant part, perform "sedentary work as defined in 20 C.F.R. 416.967(a)
11 except she can lift and/or carry 20 pounds occasionally and 10 pounds frequently, sit for about
12 six hours in an eight-hour workday, and stand and walk for about two hours in an eight-hour
13 workday." AR at 100. In the decision at issue on appeal, the ALJ stated that she adopted the RFC
14 finding from the previous decision because the current evidence did not support any change in
15 Plaintiff's RFC since the time of that decision. *See id.* at 15.

16 Plaintiff argues that the ALJ failed to fully adopt the prior RFC finding because the
17 ALJ's RFC assessment in the current decision is not identical. Specifically, in the current
18 decision, the ALJ found that Plaintiff had the RFC to, in relevant part, perform "light work as
19 defined in 20 C.F.R. 416.967(b) except she can stand and walk about two hours in an eight-hour
20 workday; can sit about six hours in an eight-hour workday[.]" AR at 21. Plaintiff emphasizes that
21 if she had been limited to sedentary work in the current decision, as she had been in the prior
22 decision, she would have been found disabled under the Medical-Vocational Guidelines ("the
23 Grids") due to a change in age category. (Dkt. # 10 at 10.)

1 Plaintiff's argument fails for two reasons. First, although it is undisputed that the two
2 RFC assessments are not identical, Plaintiff has not shown that the two RFC assessments are
3 meaningfully different. As argued by the Commissioner (dkt. # 11 at 11), the differences
4 between the wording of the two RFC assessments is insignificant because in both decisions, the
5 ALJ found Plaintiff capable of sitting for approximately six hours per workday, standing/walking
6 approximately two hours per workday; and lifting/carrying 20 pounds occasionally and 10
7 pounds frequently. Whether the ALJ had used the "sedentary" or "light" label is irrelevant
8 because an ALJ is not required to refer to exertional categories in RFC assessments. *See* 20
9 C.F.R. §§ 404.1545, 416.945 (requiring that an RFC assessment define a claimant's work-related
10 abilities on a function-by-function basis, and include a required narrative discussion). An ALJ
11 *may* use an exertional label as a shorthand to describe a claimant's functional abilities, but is not
12 required to do so. *See, e.g., Terry v. Saul*, 998 F.3d 1010 (9th Cir. 2021) (finding that an ALJ's
13 reference to plaintiff's ability to perform "medium work" adequately communicates his ability to
14 stand/walk approximately six hours out of an eight-hour workday); Social Security Ruling
15 ("SSR") 96-8p, 1996 WL 374184, at *1 (Jul. 2, 1996) (finding that only after describing a
16 claimant's work abilities on a function-by-function basis "*may* RFC be expressed in terms of the
17 exertional levels of work, sedentary, light, medium, heavy, and very heavy"). The exertional
18 label is thus neither required nor dispositive, and Plaintiff has not identified a meaningful
19 distinction between the two RFC assessments on the basis of label alone.

20 Plaintiff's argument also fails for a second reason. Plaintiff suggests that if the ALJ had
21 fully adopted the prior RFC assessment for sedentary work, as she purported to do, Plaintiff
22 would have been found disabled via operation of the Grids. (Dkt. # 10 at 10.) But Plaintiff was
23 not limited to "sedentary work" even in the prior RFC assessment. The prior RFC assessment

found that Plaintiff could lift/carry 20 pounds occasionally and 10 pounds frequently, which exceeds the lifting/carrying requirements of sedentary work. *See AR at 100; SSR 83-10, 1983 WL 31251, at *5 (Jan. 1, 1983).* Because Plaintiff's exertional abilities fell between sedentary and light work, even as defined in the prior ALJ decision, Plaintiff would not have been entitled to a finding of disability under the Grids even if the prior RFC assessment had been carried over verbatim. *See SSR 83-12, 1983 WL 31253 (Jan. 1, 1983).* The ALJ properly consulted a vocational expert to identify jobs that Plaintiff could perform in the instant case (*see AR at 26*), and did not err in relying on that testimony to find Plaintiff not disabled at step five.

Plaintiff has not established that the ALJ's RFC assessment is erroneous either because it fails to comport with prior adopted findings, or because those prior findings suggest that Plaintiff should have been found disabled under the Grids in the current decision. Accordingly, the Court rejects this assignment of error.

V. CONCLUSION

For the foregoing reasons, the Commissioner's final decision is **AFFIRMED**, and this case is **DISMISSED** with prejudice.

Dated this 23rd day of September, 2022.

W. J. Releford

MICHELLE L. PETERSON
United States Magistrate Judge